Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

NO. 79-694

MRS. GRADY E. GUNTHARP, SR.,
Petitioner

vs.

PLANTERS OIL MILL,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE UNITED STATES.

MRS. GRADY E. GUNTHARP, SR., the Petitioner herein, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Mississippi entered in the above entitled case on May 30, 1979.

OPINIONS BELOW

There were two appeals in this case. The opinion of the Supreme Court of Mississippi in the first appeal is reported in *Guntharp v. Planters Oil Mill,* 358 So.2d 397 (Miss. 1978) and is set forth as Appendix "A (1)" for reference. The judgment of the Supreme Court of Mississippi in the

second appeal, here sought to be reviewed, is reported in *Guntharp v. Planters Oil Mill,* 372 So.2d 1274 (Miss. 1979) and is set forth as Appendix "A (2)". The order denying the petition for rehearing is set forth as Appendix "A (3)". The Appendix is separately presented to this petition.

JURISDICTION

The judgment of the Supreme Court of Mississippi was entered on May 30, 1979. A timely petition for rehearing was denied on August 1, 1979. (Appendix A, infra, page A-8). The jurisdiction of the Court is invoked under 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED

Whether a trial court's action in summarily dismissing a claim in excess of Thirty-three Thousand ($33,000.00) Dollars against a defendant, without denial by the defendant or other pleading, without notice of hearing on the merits of the claim, without benefit of record or opportunity to present evidence in support of the claim, constitutes a denial of due process and equal protection under the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISION INVOLVED

The pertinent provision of the United States Constitution, Amendment XIV, provides:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT

Litigation between these parties, Mrs. Grady E. Guntharp and Planters Oil Mill, began in 1974 in an original action wherein Planters Oil Mill brought its Bill of Complaint against Booneville Grain Company, both Mississippi corporations, alleging that Booneville Grain Company was indebted to Planters Oil Mill in the sum of One Hundred Fifty-nine Thousand Four Hundred Eight Dollars and Thirty-six ($159,408.36) Cents, that Booneville Grain Company was insolvent and requesting the Chancery Court of Tunica County, Mississippi, to liquidate Booneville Grain Company and to apply the proceeds to satisfaction of the debt.

Mrs. Grady E. Guntharp, derivatively as a minority stockholder in Booneville Grain Company, filed a cross-bill against Planters Oil Mill alleging that Planters' and Booneville's common officers and directors had committed acts of fraud against Booneville Grain Company and that, in fact, Planters owed Booneville over four hundred thousand dollars.

The case was tried before the Chancellor and, he having failed to render a decision within six (6) months after taking the case under advisement, the case was appealed to the Mississippi Supreme Court under the provisions of Section 11-1-17 Mississippi Code Annotated (1972) for decision.

The Mississippi Supreme Court, on May 3, 1978, rendered its decision, giving judgment to Planters Oil Mill against Booneville Grain Company for One Hundred Fifty-nine Thousand Four Hundred Eight Dollars and Thirty-six ($159,408.36) Cents, denying Mrs. Guntharp's cross-bill, and remanding the cause to the Chancery Court of Tunica County, Mississippi, to effect the liquidation of Booneville Grain Company and to apply the proceeds thereof to satis-

faction of the judgment given to Planters Oil Mill (Appendix A (1), *infra*, page A-1.)

On remand the Chancery Court appointed a liquidating receiver (R. 4), who sold Booneville Grain Company's assets at public sale (R. 15), and whose report of sale was confirmed by the Chancery Court (R. 11).

Thereafter, Planters Oil Mill filed its motion requesting that the court require the liquidating receiver to disburse the proceeds of the sale in satisfaction of its judgment (R. 21).

Shortly after the filing of the above-mentioned motion, Mrs. Guntharp, through counsel, and again in behalf of Booneville Grain Company, filed her petition to stay disbursement of the proceeds of the sale. The petition alleged that during the interim between filing of the original action and the Mississippi Supreme Court's decision, Planters Oil Mill had collected at least Thirty-three Thousand Two Hundred Forty-nine ($33,249.00) Dollars from Booneville Grain Company and that the judgment of the Mississippi Supreme Court should be reduced in at least this amount. The petition further alleged that it was believed that Planters Oil Mill had collected other sums from Booneville Grain Company, but, by virtue of the fact that Booneville Grain Company was in the hands of Planters Oil Mill (the corporations had common officers and directors, and Planters had purchased Booneville's assets at the receiver's sale, R. 16), Mrs. Guntharp did not have access to the corporate records and, therefore, no way to determine if such other funds had been collected by Planters Oil Mill. Therefore, an accounting was requested of Planters Oil Mill in this respect (R. 25-28).

Without giving Mrs. Guntharp or her counsel notice that her petition would be considered, without having any response of Planters Oil Mill of record, without benefit of

record or opportunity to present evidence in support of her claim, the Chancery Court denied her petition and granted Planters' motion (R. 35).

One Hundred Fifty-five Thousand ($155,000.00) Dollars of the One Hundred Sixty-one Thousand ($161,000.00) realized from the sale (R. 15) was paid to Planters Oil Mill (R. 38).

Appeal was again taken to the Mississippi Supreme Court, which, on May 30, 1979, affirmed the actions of the Chancery Court. (Appendix A (2)). A timely petition for rehearing was denied August 1, 1979. (Appendix A (3)).

THE STAGE OF THE PROCEEDINGS AT WHICH, AND THE MANNER IN WHICH, THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS RAISED

Petitioner's assertion of deprivation of due process and equal protection in the summary denial of her petition by the Chancery Court was raised in general terms by assignment of error in the first instance, and specifically upon petition for rehearing in the second appeal.

The Mississippi Supreme Court wrote no opinion in the second appeal, but simply affirmed the action of the lower court.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because fundamental Constitutional rights of due process and equal protection under the law have been denied this Petitioner.

As the Court can see, the sale of Booneville Grain Company's assets generated only One Hundred Sixty-one Thousand ($161,000.00) Dollars. All of these funds were appro-

priated by the lower court in payment of judgments and fees, with the result that Mrs. Guntharp's interest in the corporation, and the interests of the other stockholders, were rendered totally worthless. Had Mrs. Guntharp been afforded the opportunity to prove at least the allegation of her petition that Planters Oil Mill had already received Thirty-three Thousand Two Hundred Forty-nine ($33,249.00) Dollars in satisfaction of its judgment, Planters Oil Mill would have received only One Hundred Twenty-six Thousand One Hundred Fifty-nine Dollars and Thirty-six ($126,159.36) Cents, leaving Thirty Thousand Two Hundred Sixty-three Dollars and Ninety-six ($30,263.96) Cents to be divided among the stockholders as their interest appeared, and according to the Mississippi Supreme Court's direction in the first appeal. (Appendix A (1), page A-1.)

The action of the Chancery Court, and the Mississippi Supreme Court in affirmance, has deprived this Petitioner of property without due process and has denied her access to the courts of her State in violation of the Constitution of the State of Mississippi, Article 3, Section 24, which provides:

> "All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay."

The action of the Chancery Court, in dismissing the petition without a hearing on its own motion, is expressly contrary to previous decisions of the Mississippi Supreme Court. In *Yancy v. City of Oxford*, 254 Miss. 636, 181 So. 2d 912 (1966), the Mississippi Supreme Court so declared, saying:

> The Court, on its own motion, entered an order of dismissal finding in the Order, "that the questions involved in the matter are presently moot . . ."
>
> * * * * *
>
> This dismissal is in the nature of a compulsory nonsuit which is not recognized in Mississippi.
>
> 181 So.2d at 912.

So also, the Mississippi Supreme Court said, in *Winston v. Miller*, 20 Miss. 550, 12 Smedes & M. 550 (1849):

> In this country there is no such thing as a compulsory nonsuit, if the party insists that a jury shall pass upon his case. But what by the English practice would be good ground to compel a party to take a nonsuit, would in our law be good reason for a verdict against him; that is, where the parties have entered upon the trial. 12 Smedes & M. at 554.

That due process of law requires, before a person may be deprived of property, adequate notice and an opportunity to be heard, is beyond dispute. *Grannis v. Ordean*, 234 U.S. 385, 34 S.Ct. 779, 783, 58 L.Ed. 1363. Likewise,

> The dismissal of the complaint for failure to state a claim was, as has been stated, without a hearing and without an opportunity to be heard. The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of the right requires reversal. *Council of Federated Organizations v. Mize*, 339 F.2d 898, 900-901 (5th Cir. 1964).

The Constitution requires an opportunity to be heard which must be granted at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187 (1965). A State must afford to all individuals a meaningful opportunity to be heard if it is to fulfill the promise

of the Due Process clause. *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780 (1971).

This case presents no new or extraordinary question of Constitutional law, but the impact of the denial of one litigant's rights is nonetheless significant and repugnant to the Constitution by its simplicity. Such a denial of fundamental Constitutional rights should not go unnoticed nor unremedied, and for this very reason this is a case peculiarly appropriate for the exercise of this Court's discretionary jurisdiction.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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PROOF OF SERVICE

I, Roy O. Parker, attorney for Mrs. Grady E. Guntharp, Sr., Petitioner herein, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 29th day of October, 1979, I served copies of the above and foregoing Petition for Writ of Certiorari to the Supreme Court of Mississippi, together with appendices thereto, by mailing and depositing same in a United States Post Office or mail box, with first class postage prepaid, in a duly addressed envelope, to Honorable John W. Dulaney, Jr., P. O. Box 188, Tunica, Mississippi 38676, attorney for Planters Oil Mill, the Respondent herein.

It is further certified that all parties required to be served have been served.

This the 29th day of October, 1979.

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